

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24074 OF 2006

DATED 20th NOVEMBER, 2006

BETWEEN

Peruri Venkata China Krishnaiah

... Petitioner

and

The Revenue Divisional Officer, Peddapuram and another.

... Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.24074 OF 2006

ORDER:

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The petitioner herein is aggrieved by action of the first respondent in entertaining miscellaneous appeal No.829 of 2006 filed by second respondent under Section 5-B of A.P.Rights in Land and Pattadar Pass Books Act, 1971 (the Act, for brevity). He seeks ineffect a writ of prohibition restraining the first respondent in proceeding with the said appeal during the pendency of the suit being O.S.No.52 of 2006 on the file of the Court of the Principal Senior Civil Judge, Pithapuram, which was filed by the petitioner for declaration and possession of the property consisting of agricultural wet land admeasuring Acs.6.74 in survey No.736, Acs.1.60 and another extent of Acs.3.30 in survey No.67 situated at A.Annavaram village of Sankavaram Mandal in East Godavari District.

The petitioner alleges that land in survey No.736 of A.Annavaram village originally belonged to one Peruri Varaha Lakshmi Narasimha Rao, who bequeathed the same under a Will dated 11.06.2005 to the petitioner, and that after death of testator on 30.06.2005, the petitioner became absolute owner. The petitioner approached the Mandal Revenue Officer (MRO) and requested for mutation, which was granted. The petitioner was also issued Pattadar Pass Books and Title Deeds (PPBs/TDs). He was allegedly in possession of the property. When the second respondent (wife of testator) was trying to alienate the property, the petitioner filed suit for declaration and possession. At that stage, the second respondent filed appeal seeking cancellation of PPBs and TDs issued in favour of petitioner.

Learned counsel for petitioner submits that after receiving notice from the first respondent, the petitioner appeared before him and brought to his notice about the pendency of the suit and in spite of the same, he is bent upon proceeding with the case. According to the learned counsel, when a suit for title is pending before the civil Court, the first respondent cannot exercise the jurisdiction under the Act. He placed strong reliance on **V.Goutham Rao v Revenue Divisional Officer, Jagtial, Karimnagar District**^[1].

There cannot be any quarrel with legal position that whenever a suit for declaration of title is pending between the parties, the recording

authority or the appellate authority under the Act has to postpone the enquiry. For recording authority, to do so, the party seeking to defer enquiry by the authorities constituted under the Act has to necessarily file a declaration. Mere statement in the counter affidavit or rejoinder filed before the authority as is alleged in this case, would not be sufficient. A reference may be made to Rule 9(1)(c)(ii) of the A.P. Rights in Land and Pattadar Pass Books Rules, 1989 (the Rules, for brevity), which reads as under.

9(1)(c)(ii) – In respect of cases falling under Rule 9(1)(a) (i), the Mandal Revenue Officer shall hold a summary enquiry as to who has the right to succeed to the property of the deceased registered holder, according to the principles of the Law of Succession which govern the case and give notice to all persons known or believed to be interested to the effect that the registry will be made in the name of the person found to be entitled, unless a declaration is filed, within three months from the date of the notice, by any person objecting to the registry, stating that he has instituted a suit in a Civil Court to establish his superior title and an authenticated copy of the plaint in the suit is produced. If no declaration is filed, the registry should be made as stated in the notice, at the expiration of three months. If a declaration is filed, the result of the suit should be awaited before taking further action.

The petitioner has admittedly not filed such declaration along with copy of the plaint and therefore, liberty is given to the petitioner to do so before the first respondent. In which event, the first respondent shall decide the same as preliminary issue before proceeding further. The writ petition for a writ of prohibition is misconceived as it is not demonstrated before this Court that the first respondent suffers from inherent lack of jurisdiction. Be it noted, the Revenue Divisional Officer is duly constituted appellate authority either under Section 5(5) or 5-B of the Act and therefore, relief prayed in the writ petition cannot be granted.

The writ petition is accordingly dismissed. No costs.

(V.V.S.RAO,J)

20.11.2006.
pln

^[1] 2003 (1) ALT 615 = 2003 (1) ALD 681